

Application No. 10/023,408
Reply to Office Action of Feb. 23, 2004

D. REMARKS

Specification

The Examiner objected to the disclosure because of an informality. In particular, pages 1-2 of the specification lack serial numbers for co-pending applications. Applicants have amended the specification to include the serial numbers for co-pending applications to remove the informality.

Double Patenting

The Examiner rejected claims 1-36 on nonstatutory double patenting grounds based on the judicially created doctrine grounded in public policy to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ 2010 (Fed. Cir. 1993). The Examiner notes that a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome a provisional rejection based on nonstatutory double patenting ground provided that the conflicting application is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Specifically, the Examiner provisionally rejected claims 1-36 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of copending Application No. 10/022,611. The Examiner states that although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-36 of the present application are similar in scope to claims 1-40 of Application No. 10/022,611 with obvious wording variations.

Responsive to the provisional double patenting rejection, Applicants traverse the rejection by filing with this paper a terminal disclaimer in compliance with 37 CFR 1.321(c), as provided by 37 CFR 1.130(b) (When an application or a patent under reexamination claims an invention which is not patentably distinct from an invention claimed in a commonly owned patent with the same or a different inventive entity, a double patenting rejection will be made in

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the application or a patent under reexamination. A judicially created double patenting rejection may be obviated by filing a terminal disclaimer in accordance with § 1.321(c).)

Conclusion

In view of the foregoing, Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the Examiner feels that the pending claims could be allowed with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

The Commissioner is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

Respectfully submitted,



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